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Security Council Committee established pursuant to resolution 1718 (2006)

Note verbale dated 10 March 2017 from the Permanent Mission of Hungary to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Hungary to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1718 (2006), and, with reference to paragraph 36 of resolution 2321 (2016), in which the Council called upon all Member States to report to it on concrete measures that they have taken to implement effectively the provisions of the resolution, it has the honour to submit to the Committee the report of the Government of Hungary on the implementation of the resolution (see annex).

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Annex to the note verbale dated 10 March 2017 from the Permanent Mission of Hungary to the United Nations addressed to the Chair of the Committee

Report of Hungary on the implementation of Security Council resolution 2321 (2016)

1. The Security Council adopted its resolution 2321 (2016) establishing new restrictive measures against the Democratic People's Republic of Korea. The measures include, among others, export bans on copper, nickel, silver, zinc, statues and new helicopters and vessels, a tightening of prohibitions in the transport sector and new restrictions in the banking sector.

2. Hungary is a State member of the European Union, and the above-mentioned new sanctions imposed by the Security Council are mainly implemented by means of binding European Union decisions of the European Union and binding and directly applicable European Union regulations of the European Union. According to the founding treaties of the European Union, the decision shall be binding in its entirety and the regulation shall be binding in its entirety and directly applicable to all European Union States members of the European Union without the need of their transposition into national legislation.[1]

3. In the case of the Democratic People's Republic of Korea, the following decisions and regulations are applicable:

(a) Council of the European Union decision 2016/849/CFSP of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing decision 2013/183/CFSP; [2,3]

(b) Council of the European Union regulation (EC) No. 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea, and its amendments.[4,5,6]

Export restrictions

4. Trade restrictions imposed by previous Security Council resolutions are fully implemented by Council of the European Union decision 2016/849/CFSP and Council regulation (EC) No. 329/2007.

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[1] See article 288 of the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, C 326, 26 October 2012, pp. 1-390.

[2] Council of the European Union decision 2016/849/CFSP, *Official Journal of the European Union*, L 141, 28 May 2016, pp. 79-124.

[3] See the most recent amendment to Council of the European Union decision 2016/849/CFSP concerning restrictive measures against the Democratic People's Republic of Korea, Council decision 2017/345/CFSP of 27 February 2017.

[4] See the most recent amendment of Council regulation (European Union) 2017/330 of 27 February 2017 amending regulation (EC) No. 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea.

[5] Council of the European Union decision 2017/345/CFSP, *Official Journal of the European Union*, L 50, 28 February 2017, pp. 59-65.

[6] Council of the European Union regulation (EU) 2017/330, *Official Journal of the European Union*, L 50, 28 February 2017, pp. 1-8.

5. Council of the European Union decision 2016/849/CFSP prescribes a total arms embargo on the Democratic People's Republic of Korea, covering the prohibition of the export to or import from the Democratic People's Republic of Korea of weapons, arms and ammunition of any type and the prohibition of technical assistance, services and training in relation to those items.

6. Council of the European Union regulation (EC) No. 329/2007 contains economic restrictions imposed by the Security Council and autonomous sanctions ordered by the European Union.

7. The Council of the European Union, in its regulation (EC) No. 329/2007, prohibited the export of dual-use items listed in annex I to Council regulation (EC) No. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.[7] The list of dual-use items therein corresponds to the dual-use list of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (conventional weapons), the Nuclear Suppliers Group (nuclear items), the Missile Technology Control Regime (items related to the development, testing, production and usage of ballistic missiles) and the Australia Group (items related to biological weapons) as well as the chemical weapons control list of the Australia Group and the scheduled chemicals under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. The legislation also ensures the effective implementation of Security Council resolution 1540 (2004) and contains provisions for the control of technical assistance related to dual-use items. The catch-all provisions established by the Council of the European Union, in its regulation (EC) No. 428/2009, ensure that the authorities of States members have the competence to prohibit the export of non-listed items that may contribute to activities related to weapons of mass destruction or conventional weapons in a country subject to an arms embargo.[8]

8. The Council of the European Union, in its regulation (EC) No. 329/2007 designated other dual-use items that may contribute to a weapons of mass destruction programme, including delivery systems, of the Democratic People's Republic of Korea. In the most recent amendment of regulation (EC) No. 329/2007, the Council extended the sanctions list regarding weapons of mass destruction to include the provisions with regard to measures and items according to paragraphs 4 and 7 of Security Council resolution 2321 (2016) and prohibited the sale, supply, transfer and export of helicopters and vessels.

9. The import restrictions on non-sensitive items, such as non-dual-use and non-military items, are enforced by the National Tax and Customs Administration and, in cases of licensing requirements, licences are issued by the government office of the capital city, Budapest. After the adoption of Security Council resolution 2321 (2016), the Department of Trade, Defence Industry, Export Control and Precious Metal Assay of the government office of the capital city, Budapest, requested the customs authorities to provide information on the export of the items listed in annex III to Security Council resolution and on the import of coal, iron and iron ore,

[7] Council of the European Union regulation (EC) No. 428/2009, *Official Journal of the European Union*, L 134, 29 May 2009, pp. 1-269.

[8] See article 4 of Council of the European Union regulation (EC) No. 428/2009.

copper, nickel, silver, zinc, rugs and tapestries. According to the data received, there was no attempt to export or import those listed items in relation to the Democratic People's Republic of Korea.

10. Evasion of customs procedures and transfer of the listed items to the Democratic People's Republic of Korea is a criminal offence in Hungary (violation of international economic restrictions).[9]

Prohibition of financial assistance

11. With regard to the prohibition of financial assistance, it must be underlined that, in the European Union, it is prohibited to provide financing or financial assistance for trade with the Democratic People's Republic of Korea, including the granting of export credits, guarantees or insurance, to natural or legal persons, entities or bodies involved in such trade in accordance with the relevant European Union regulations. By way of derogation from that provision, the relevant competent authority of the State member, as identified on the websites listed in the annex to the relevant European Union regulation, may authorize financial support for trade with the Democratic People's Republic of Korea, provided that the State member has obtained the advance approval of the sanctions committee, on a case-by-case basis.[10]

Financial and asset-related restrictive measures

12. In Hungary, the financial-related restrictive measures (freezing of funds or other assets) imposed by the Security Council are implemented on the basis of directly applicable European Union regulations. Under those regulations, all funds, other financial assets and economic resources belonging to, or owned or held by a natural or legal person, group or entity designated by the sanctions committee and consequently listed in the annex to the relevant European Union regulation must be frozen without delay.

13. According to European Union regulations, funds are financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, drafts, money orders and other instrument of payment; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; publicly and privately traded securities and instrument of debt, including stocks and shares, certificates presenting securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents containing evidence of an interest in funds or financial resources, and any other instrument of export-financing. Economic resources are assets of every kind, whether tangible or intangible, movable or immovable, that are not funds but can be used to obtain funds, goods or services.

14. The aim of the measures to freeze assets is to prevent any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or

[9] See article 327 of Act C of 2012 on the Criminal Code.

[10] See article 1, paragraph 10 of Council of the European Union regulation (EU) 2017/330 and article 9 (b) of regulation (EC) No. 329/2007.

other change that would enable the use of the funds. The effective implementation of restrictive measures with regard to funds and economic resources owned jointly by a designated person and a non-designated one is also covered in practice.

15. Act CLXXX of 2007 on the implementation of financial and asset-related restrictive measures ordered by the European Union, and on relevant amendments of other laws contains the relevant and necessary implementing provisions related to financial and asset-related restrictive measures set out in the aforementioned European Union regulations. According to Act CLXXX, the Hungarian Financial Intelligence Unit is the central competent authority for implementing financial restrictive measures in Hungary as described below.

16. The service providers and authorities overseeing property registration are required to inform the Financial Intelligence Unit if they have any information indicating that listed individuals or entities from the Democratic People's Republic of Korea have funds or assets within the territory of Hungary. Accordingly, the Unit examines the report sent by the service provider or the authority on whether or not the individual or the entity subject to financial restrictive measures has funds or other assets in Hungary.

17. The Financial Intelligence Unit examines the report sent by the service providers, in the case of a national transaction, within two working days, and in the case of a non-national transaction, within four working days.

18. The Financial Intelligence Unit examines the report sent by authorities overseeing property registration in three working days.

19. If the Financial Intelligence Unit ascertains that the individual or entity subject to financial restrictive measures indeed has funds covered by the restrictive measures within the territory of Hungary, it informs without delay the competent court, according to the location of the asset; the competent company registration court; the minister responsible for tax policy; and, in certain cases, the authority overseeing asset registration. The competent court is then authorized to order the freezing of funds in a non-litigious procedure, on the basis of a notice from the Unit.

20. The Financial Intelligence Unit also informs the service providers or the authorities overseeing asset registrations if the requirements for the application of the restrictive measures are not fulfilled, for example, if there are no funds within the territory of Hungary.

21. After the submission of the report to the Financial Intelligence Unit, the service providers are required to refrain from carrying out the transaction, within the period of two working days in the case of a national transaction and within the period of four working days in the case of an international transaction. If other conditions are met and the Unit does not indicate that it is necessary to apply restrictive measures, the transaction could be carried out on the third or fifth working day. The authority overseeing asset registration must not carry out the request for registration or request for registration of changes within the period of three working days after the submission of its report to the Financial Intelligence Unit. However, the request could be carried out on the fourth working day, provided that other requirements are fulfilled and the Unit does not establish that restrictive measures should be applied.

22. To date in Hungary, there have been no assets frozen pursuant to the obligations arising from Security Council resolutions on the Democratic People's Republic of Korea.

23. With regard to the prohibition of making funds and other assets available for designated persons or entities, that prohibition must be executed by the service providers without any prior notification to the Financial Intelligence Unit.

24. Moreover, on the basis of the direct applicability of European Union regulations, the clear guidance from the European Union contained therein is the primary source of such information, including its guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union common foreign and security policy and best practices for the effective implementation of restrictive measures. The competent national authorities also provide information on their websites and upon request. The supervisory authorities prepare guidelines and model rules for the service providers and organize training seminars and consultations with them on the implementation of the financial restrictive measures.

25. Regarding the exchange of information, under Act CLXXX, the competent authorities, the courts and the Ministry for the National Economy are required to share information regarding asset freezes and forward that information to the States members and the member institutions of the European Union.

26. In order to minimize the risk of asset flight, the Hungarian authorities have established the following mechanism for managing changes in sanctions lists and restrictive measures:

(a) The Permanent Mission of Hungary to the United Nations regularly monitors the activities of the United Nations sanctions committees.

(b) Whenever a new Security Council resolution is adopted or a list is changed, the Permanent Mission immediately informs the Ministry of Foreign Affairs and Trade and the Ministry for the National Economy.

(c) Subsequently, the Ministry for the National Economy immediately informs the relevant supervisory authorities specified in section 5 of the Anti-Money-Laundering and Combating the Financing of Terrorism Act, including the Central Bank of Hungary, the Department for Gambling Supervision of the National Tax and Customs Administration, the Hungarian National Chamber of Notarics Public and the Hungarian Bar Association; the organizations keeping records on any kind of assets pursuant to Act CLXXX; the Financial Intelligence Unit and the Counter-Terrorism Centre.

(d) If the supervisory authorities or the organizations keeping records on any kind of assets have any information, they must immediately inform the Financial Intelligence Unit.

(e) The supervisory authorities and the Financial Intelligence Unit must immediately publish the changes on their websites and, in parallel, the supervisory authorities must immediately inform electronically the organizations representing the interest concerned, the regional organizations of the service providers and, if feasible, all service providers, including financial institutions, lawyers, gambling services, accountants, auditors and trusts, in order to enable them to assess, without

delay, whether they have any information on the individual or organization that became the subject of financial and asset-related restrictive measures as a result of the new regulation or a change in the sanctions list.

(f) If the service provider has information but European Union financial and asset-related restrictive measures does not yet apply to the individual or organization falling within the scope of the financial sanctions ordered by the Security Council, and thus Act CLXXX cannot yet be applied to them, pursuant to section 24 of the Anti-Money-Laundering and Combating the Financing of Terrorism Act, the service provider must submit a report to the Financial Intelligence Unit and can, in parallel, suspend the relevant transaction or any transaction aimed at having access to the funds or economic resource concerned. However, the latter provision only applies in the case of terrorism-related designations.

Procedure in relation to the sanctions regimes of the European Union

27. The following is the procedure in relation to the sanctions regimes of the European Union, both those that are based on a Security Council resolution and those that are not:

(a) With the involvement of the Permanent Representative of Hungary to the European Union, the Ministry of Foreign Affairs and Trade regularly monitors the activities of the Working Party of Foreign Relations Counsellors and other committees and working groups dealing with financial or property related restrictive measures.

(b) With the involvement of the Permanent Representative of Hungary to the European Union, the Ministry of Foreign Affairs and Trade regularly informs the relevant ministries, including the Ministry for the National Economy, on proposals to adopt a new sanction regime or to amend the sanctions list; on the outcome of the negotiations; and on the estimated entry into force of the legal provisions. The Ministry for the National Economy immediately informs the supervisory agencies specified in article 5 of the Anti-Money-Laundering and Combating the Financing of Terrorism Act, the agencies keeping records on assets pursuant to Act CLXXX, the Financial Intelligence Unit and the Counter-Terrorism Centre.

(c) If the supervisory agencies or the organizations keeping records on assets have any information, they immediately inform the Financial Intelligence Unit.

(d) The supervisory agencies and the Financial Intelligence Unit immediately publish the amendments on their websites and, in parallel, the supervisory agencies immediately inform electronically the organizations representing the interest concerned, the regional organizations of the service providers and, if feasible, all service providers, in order to enable them to assess, without delay, whether they have any information on the individual or entity that became the subject of financial and asset-related restrictive measures as a result of the amendments.

(e) If a service provider has information, it submits a report to the Financial Intelligence Unit pursuant to article 10 of Act CLXXX.

Customs procedures

28. Regarding customs procedures, it must be underlined that the European Union restrictive measures have been integrated in the online customs tariff database

operated by the customs authorities of the States members of the European Union, therefore, the necessary actions can be taken without delay at the start of the customs procedure.

Cargo inspection

29. Cargo, including personal luggage and checked baggage, within or transiting through the European Union, including airports, seaports and free zones, is subject to inspection for the purposes of ensuring that it does not contain items prohibited by Security Council resolutions regarding the Democratic People's Republic of Korea or by the relevant European Union regulation, when any of the following conditions are met:

(a) The cargo originates from the Democratic People's Republic of Korea;

(b) The cargo is destined for the Democratic People's Republic of Korea;

(c) The cargo has been brokered or facilitated by the Democratic People's Republic of Korea or its nationals or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them;

(d) The cargo has been brokered or facilitated by persons, entities or bodies listed in annex IV to the relevant European Union regulation;

(e) The cargo is being transported on a the Democratic People's Republic of Korean flagged vessel or aircraft registered to the Democratic People's Republic of Korea, or on a Stateless vessel or aircraft.[11]

Prohibition of the sale or transfer of helicopters and vessels

30. With regard to the embargo on helicopters and vessels, it must be underlined that, in the European Union, it is prohibited to sell, supply, transfer or export, directly or indirectly, helicopters and vessels, as listed in the relevant European Union regulation, to the Democratic People's Republic of Korea. By way of derogation from that provision, the relevant competent authority of a State member, as identified on the websites listed in the annex to the relevant European Union regulation, may authorize such sale, supply, transfer or export, provided that the State member has obtained advance approval of the sanctions committee, on a case-by-case basis.

Prohibition of the purchase or sale of petroleum products

31. The relevant European Union legislation prohibits the import, purchase or transfer, directly or indirectly, of petroleum products from the Democratic People's Republic of Korea, whether or not originating in the Democratic People's Republic of Korea, as well as the sale, supply, transfer or export of, directly or indirectly, the goods and technology, including software, listed in the annex to the relevant legislation, whether or not originating in the European Union, to any natural or legal person, entity or body in, or for use in, the Democratic People's Republic of Korea.

[11] See article 1, paragraph 3, of Council of the European Union regulation (EU) 2017/330 and article 4 (e) of regulation (EC) No. 329/2007.

Prohibition of procurement of statues

32. In the European Union, it is prohibited to import, purchase or transfer from the Democratic People's Republic of Korea, directly or indirectly, statues, whether or not originating in the Democratic People's Republic of Korea.

Scientific and technological cooperation

33. The European Union provides for States members to take further measures to prevent specialized teaching or training of nationals of the Democratic People's Republic of Korea in disciplines that would contribute to the nuclear or ballistic-missile programmes of the Democratic People's Republic of Korea, as well as to suspend scientific and technical cooperation involving persons or groups officially sponsored by or representing the Democratic People's Republic of Korea, except for medical exchanges.

34. Currently there is no scientific and technical cooperation or legal framework between Hungary and the Democratic People's Republic of Korea.

Restrictions on foreign missions of the Democratic People's Republic of Korea

35. The relevant legal act of the European Union prohibits the lease or otherwise making available of real property to the Democratic People's Republic of Korea, or for it to be used by or for the benefit of the Democratic People's Republic of Korea, for any purpose other than diplomatic or consular activities. The decision also prohibits the lease from the Democratic People's Republic of Korea of real property situated outside the territory of the Democratic People's Republic of Korea.

36. In that regard, the Democratic People's Republic of Korea does not own or lease any real property in Hungary.

37. Moreover, diplomatic relations between the Democratic People's Republic of Korea and Hungary were reduced to a minimum, beginning in 1999. Hungary is represented by its Ambassador residing in Seoul and the Democratic People's Republic of Korea is represented by the Ambassador of the Democratic People's Republic of Korea residing in Vienna. Therefore, there are no diplomatic or consular staff of the Democratic People's Republic of Korea working in Hungary who could be reduced as set out in Security Council resolution 2321 (2016).

38. The European Union also prohibits a diplomatic mission or consular post of the Democratic People's Republic of Korea, or staff members of such a mission or post, from owning or controlling bank accounts in the European Union, except for one account in the State member or States members in which the mission or post is hosted or to which its members are accredited.

39. The European Union, in the relevant legislation, called for the closure, within 90 days of the adoption of Security Council resolution 2321 (2016), of the existing representative offices, subsidiaries or banking accounts in the Democratic People's Republic of Korea. This measure is fully implemented by Hungary, given that there are no representative offices, subsidiaries or banking accounts of Hungary in the Democratic People's Republic of Korea.

Restrictions on officials of the Democratic People's Republic of Korea entering into or transiting through a State member of the European Union

40. The European Union calls upon States members to take the measures necessary to restrict the entry into or transit through their territories of members of the Government of the Democratic People's Republic of Korea, officials of that Government and members of the armed forces of the Democratic People's Republic of Korea, if such members or officials are associated with that country's nuclear or ballistic-missile programmes or other activities prohibited by the Security Council resolutions on the Democratic People's Republic of Korea.

41. In practice, the travel bans adopted by the European Union, including those issued on the basis of Security Council resolutions, are given effect through the creation of a refusal of entry alert in the Schengen Information System II, ensuring that all competent authorities of the States members apply the sanctions in a uniform manner and without delay.